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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BOARD OF PATENT APPEALS AND INTERFERENCES

In re Patent Application of:)Attorney Docket No.: E-996

Brian M. Romansky)Group Art Unit: 3621

Serial No.: 09/658,079)Examiner: P. Elisca

Filed: Sept. 11, 2000)Date: August 4, 2004

Confirmation No.: 4596

Title: Internet Advertising Metering System and Method

Mail Stop Appeal Brief - Patents

Commissioner for Patents

P.O. Box 1450

Alexandria, VA 22313-1450

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APPELLANT'S BRIEF ON APPEAL

Sir:

This is an appeal pursuant to 35 U.S.C. § 134 and 37 C.F.R. §§ 1.191 et seq. from the decision of the Primary Examiner, mailed March 4, 2004, twice rejecting claims 1, 2, 4, 5, 11-19, 21-28, 30-34 and 36-40 of the above-identified application. The fee for submitting this Brief is \$330.00 (37 C.F.R. § 1.17(c)). Please charge Deposit Account No. **16-1885** in the amount of \$330.00 to cover these fees. The Commissioner is hereby authorized to charge any additional fees that may be required or credit any overpayment to Deposit Account No. **16-1885**. The Notice of Appeal was received by the U.S. Patent and Trademark Office on June 7, 2004. Enclosed with this original are two copies of this brief.

CERTIFICATE OF MAILING

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Brian A. Lemm
Name of Registered Rep.

August 4, 2004
Date

I. Real Party in Interest

The real party in interest in this appeal is Pitney Bowes Inc., a Delaware corporation, the assignee of this application.

II. Related Appeals and Interferences

There are no appeals or interferences known to Appellant, his legal representative, or the assignee that will directly affect or be directly affected by or have a bearing on the Board's decision in this appeal.

III. Status of Claims

There are 41 claims pending in this application. Claims 1, 2, 4, 5, 11-19, 21-28, 30-34 and 36-40 stand rejected under 35 U.S.C. § 102(b) as being anticipated by Liechti et al. (U.S. 5,715,164). Claims 3, 6-10, 20, 29, 35 and 41 stand objected to as being dependent upon a rejected base claim, but were indicated as being allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

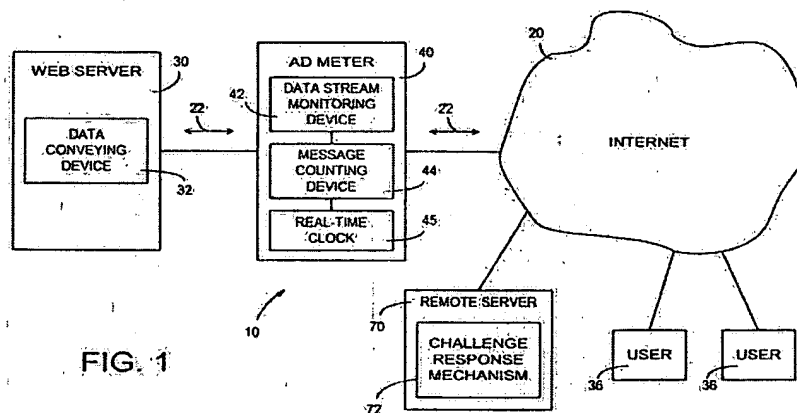
IV. Status of Amendments

There are no amendments to the claims filed subsequently to the Office Action dated March 4, 2004, twice rejecting the claims. Therefore, the claims as set forth in Appendix A to this brief are those as set forth before the final rejection.

V. Summary of Invention

Appellant's invention relates to methods and systems for metering messages presented to a user of a communications network, i.e., determining a number of times the message is actually presented to one or more users. For example, the message could be an advertisement in a web page displayed on a computer screen. A host web server can incorporate the advertisement in a network data stream as a message and send the network data stream to a network, such as, for example, the Internet, for viewing by a user. In accordance with one aspect of the present invention, a metering device monitors the network data to detect a code embedded in the advertisement message and counts the number of times that the advertisement is presented to the network. Thus, it is possible to accurately and securely track the distribution of the advertisement that can be utilized, for example, for billing purposes. (Specification, pages 2-3).

Fig. 1, reproduced below, illustrates a system 10 according to an embodiment of the invention, to be implemented in a communications network, such as the Internet 20.



Typically, a client who has a product or service that he or she wishes to advertise on the web uses an advertising service from a host web server 30. The advertisement is incorporated in a network data stream 22 as a message 24 (illustrated in Fig. 2) and appears as an image on a web page displayed on a computer screen of a user 36, for example. As shown, the host web server 30 has a data conveying device 32 to send network data 22 to the Internet 20. A metering

device 40, which resides near the host web server 30, is used to meter the advertisement message 24. The metering device 40 has a data stream monitoring device 42 to monitor the network data 22 passing through the metering device 40 in order to detect the presence of an advertisement message 24 in a stream of network traffic. The metering device 40 further includes a counting device 44 to count the number of times the advertisement message appears in the network traffic. Based on the counted number, the metering device 40 debits the client according to a charge rate that the host and the client have agreed upon. (Specification, page 5, line 25 to page 6, line 12).

A method of metering an advertisement message to be presented to the users 36 of a communications network 20 according to an embodiment of the invention is illustrated in Fig. 3, reproduced below.

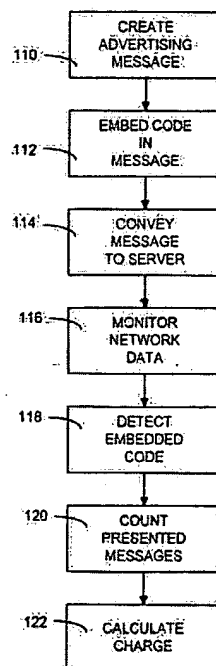


FIG. 3

As shown in Figure 3, the advertisement message 24 is created or acquired at step 110 and a code 26 is embedded in the message 24 at step 112. The message with the embedded code is conveyed to the host web server 30 at step 114. This message will be incorporated into the network data stream 22, which is conveyed to the network 20 by the host web server 30. As the metering device 40 is connected to the network 20, it monitors the network data 22 with its data stream monitoring device 42 at step 116. At the same time, the metering device 40 looks for the

embedded code 26 at step 118 in order to count the number of times the message 24 is presented to the user 36 at step 120. Based on the counted number and the rate code contained in the embedded code 26, the charge is calculated at step 122. The rate code may include a fixed rate, or a variable rate based on the time and/or date when presenting the advertisement message 24 to the users 36. (Specification, page 7, line 23 to page 8, line 4).

Additional features of the invention are discussed below in the Argument section of this Brief.

VI. Issues

A. Whether the subject matter defined in claims 1, 2, 4, 5, 11-19, 21-28, 30-34 and 36-40 is anticipated by Liechti et al. (U.S. 5,715,164).

VII. Grouping of Claims

Claims 1-41 are grouped in the following groups:

Group I - Claims 1-11.

Group II - Claims 12-16.

Group III - Claims 17-21.

Group IV - Claims 22-26.

Group V - Claims 27-37.

Group VI - Claims 38-41.

None of the claims in different Groups stand or fall together. In Group I, only claims 1 and 2 stand or fall together. In Group II, none of the claims stand or fall together. In Group III, none of the claims stand or fall together. In Group IV, none of the claims stand or fall together.

In Group V, only claims 27 and 28 stand or fall together. In Group VI, none of the claims stand or fall together. The reasons why the Appellant believes the claims to be separately patentable are set forth in the Argument section of this Brief.

VIII. Argument

As Appellant discusses in detail below, the final rejection of claims 1, 2, 4, 5, 11-19, 21-28, 30-34 and 36-40 is devoid of any factual or legal premise that supports the position of unpatentability. It is respectfully submitted that the rejection does not even meet the threshold burden of presenting a prima facie case of unpatentability. For this reason alone, Appellant is entitled to grant of a patent. In re Oetiker, 24 U.S.P.Q.2d 1443, 1444 (Fed. Cir. 1992).

A. The subject matter defined by claims 1, 2, 4, 5, 11-19, 21-28, 30-34 and 36-40 is not anticipated by Liechti et al.

Claim 1 is directed to a method of metering digital content having a message to be presented to users of a communications network. Specifically, claim 1 recites:

A method of metering digital content having a message to be presented to users of a communications network, said method comprising:

embedding a code in said message;

detecting the embedded code; and

based on the detected embedded code, counting the number of times the message is presented to a user of the communications network.

Liechti et al., in contrast, is directed to a communication system that includes a data center that communicates with a plurality of postage meters via telephone dial-up lines to conduct resetting transactions. The data center is controlled by a postal authority, and can be used for gathering statistical data from each postage meter including the number of mail items in different postal classes processed by the postage meter. The data center can also be utilized to set postage limit amounts, time limits and piece limits on a postage meter. When the imposed

limit is reached, the postage meter is programmed to halt operation. (Col. 4, line 43 to Col. 5, line 10). Liechti et al. also describes a conventional technique to reset a postage meter with additional postage by telephone, thereby obviating the need to physically carry the postage meter to the postal authority for resetting. Specifically, the postage meter calls a computerized central facility (data center) for additional available postage. The central facility verifies the meter's identity and ascertains the availability of funds in the user's account. After the information is validated, the central facility debits the user's account and supplies a combination code to the meter or to the user for the user to introduce into the meter. The meter then independently generates another combination code and compares it with the received code. If their relationship is correct, the meter is reset with the additional postage requested. (Col. 1, lines 12-31).

The Office Action contends that the system in Liechti et al. is equivalent to the current invention (Office Action, pages 2-3). Appellant respectfully disagrees. It should first be noted that in Liechti et al., there is no disclosure, teaching or suggestion of a method or system for metering messages presented via a communication network. Liechti et al., as noted above, is directed to a communication system that includes a data center and a plurality of postage meters. A communication system in which a data center communicates with a plurality of postage meters is in no way related to a system or method for metering digital content that includes a message to be presented to users of a communication network. The Office Action contends that the actions of verifying the meter's identity, ascertaining the availability of funds in the user's account, and supplying a combination code to the meter or to the user as performed in Liechti et al. discloses embedding a code in a message, and further discloses counting the number of times the message is presented to one of the users of the communications network (Office Action, page 3). There is no basis for this contention, as in Liechti et al. there is no disclosure, teaching or suggestion of embedding any type of code in a message, nor is there any disclosure, teaching or suggestion of counting the number of times the message is presented to one of the users. In Liechti et al., the data center communicates with the postage meters to impose limits, reset the available postage amount, or collect statistical data. This information constitutes the message itself. There is no code embedded in this information that is detected to allow for metering of the message. There is no disclosure, teaching or suggestion anywhere in Liechti et al. of embedding a code in a message or detecting the embedded code.

The Office Action further contends that collecting statistical data includes counting the number of times the message is presented, and relies on the disclosure of Col. 5, lines 23-65 to support this position (Office Action, page 3). Col. 5, lines 23-65, of Liechti et al. is reproduced below.

In accordance with the invention, the value of the ascending register may not exceed the postage amount limit at any time. The meter becomes inoperative as soon as the ascending register value is greater than or equal to the postage amount limit. Only by connection of the meter to data center 15, may a new postage amount limit be established. The imposition of the postage amount limit is advantageous in a postpayment scheme, where the meter user is billed for the reset amounts, as it controls the amount of credit extended to the user. The postage amount limit is adjusted by data center 15 depending on the user's creditworthiness.

The time limit imposed on a meter restricts a time period within which the meter is operative. Specifically, the time limit is expressed as a pre-selected date after which the meter is no longer allowed to process any mail items. That is, immediately after the pre-selected date has passed, the meter is locked from further operation. Only by connection of the meter to data center 15, may a new time limit be established and the meter be unlocked and resume the operation. Again, the data center has full control over the amount of operation time granted to a particular meter depending on the trustworthiness of the meter user.

As an alternative, the above time-limit concept may be implemented using a downcounting timer in the meter. The time limit is expressed as an amount of meter operation time allowed in terms of hours, minutes and seconds for example. The downcounting timer counts down, to zero, a set time which may be the initially allowed time limit. The meter is locked as soon as the timer runs down to zero. Only by connection of the meter to data center 15, may a new time limit be added to the current run time of the timer to (a) restart its operation if the current run time is zero or (b) increase its operation time if the current run time is nonzero.

The piece limit imposed on a meter restricts the number of mail items processed by the meter. That is, during operation, the meter may not process more mail items than the allowed piece limit. The meter will be locked from further operation as soon as the piece counter reaches the piece limit. Only by connection of the meter to data center 15, may a new piece limit be established and the meter be unlocked and resume the operation. Once again, data center 15 has control over the limit value and thus the use of the meter.

It should first be noted that the statistical data collected by the data center relates solely to the operation of the meter, and not to the communications performed between the data center and the meter. There is no basis for the contention that collecting statistical data includes counting the number of times the message is presented. Furthermore, the description provided in Col. 5, lines 23-65, is related to the restrictions that can be imposed on a meter by the data center. For example, the value of the ascending register within the meter may not exceed the postage limit amount at any time. The meter becomes inoperative as soon as the ascending register (within the postage meter) is greater than or equal to the postage amount limit. Only by connection of the meter to the data center may a new postage amount limit be established. (Col. 5, lines 22-27). Similarly, a time limit can be imposed on a meter that restricts a time period within which the meter is operative. Specifically, the time limit is expressed as a pre-selected date after which the meter is no longer allowed to process any mail items. Only by connection of the meter to the data center may a new time limit be established and the meter be unlocked and resume operation. (Col. 5, lines 34-41). Alternatively, the time limit concept may be implemented using a down counting timer in the meter. (Col. 5, lines 44-46). A piece limit imposed on a meter restricts the number of mail items processed by the meter. During operation, the meter may not process more mail items than the allowed piece limit. Only by connection of the meter to the data center may a new piece limit be established and the meter be unlocked and resume operation. (Col. 5, lines 56-62).

There is no disclosure, teaching or suggestion anywhere in the passages relied upon by the Office Action, or anywhere in Liechti et al. for that matter, of counting the number of times a message is presented to a user based on the detected embedded code. In fact, in Liechti et al. each communication between the data center and a particular meter is a unique, one-time communication to reset the meter and intended for only a single meter. Thus, even if the data passed between the data center and meter is considered a message, it is only provided once to a particular meter, and would not be presented to other meters. There would, therefore, be no reason or need to count the number of times a message is presented to a user.

For at least the above reasons, Appellant respectfully submits that the final rejection as to claim 1 is in error and should be reversed. Claims 2-11 are dependent upon claim 1, and therefore include all of the limitations of claim 1. For the same reasons the final rejection as to

claim 1 is in error, Appellant respectfully submits that the rejection of claims 2-11 is similarly in error and should be reversed.

As noted by the Office Action, claims 3 and 6-10 would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claim.

Claim 4 is patentable, however, separate and apart from its dependency on claim 1 in that it includes novel limitations and a unique combination that would not have been obvious at the time of the invention. Specifically, claim 4 recites that the code is embedded in a steganographic fashion. There is no disclosure, teaching or suggestion in Liechti et al. of embedding a code in a message in a steganographic fashion.

Claim 5 is patentable, however, separate and apart from its dependency on claim 1 in that it includes novel limitations and a unique combination that would not have been obvious at the time of the invention. Specifically, claim 5 recites that the message is presented by a server, and the embedded code contains a client identity associated with the digital content. There is no disclosure, teaching or suggestion in Liechti et al. of an embedded code that contains a client identity associated with the digital content.

Claim 6 is patentable, however, separate and apart from its dependency on claim 1 in that it includes novel limitations and a unique combination that would not have been obvious at the time of the invention. Specifically, claim 6 recites that the embedded code contains a rate code for calculating a charge to a client for presenting the message in the digital contents, and calculating the charge based on the counted number of times and the rate code. There is no disclosure, teaching or suggestion in Liechti et al. of an embedded code that contains a rate code for calculating a charge to a client for presenting the message in the digital contents, and calculating the charge based on the counted number of times and the rate code.

Claim 11 is patentable, however, separate and apart from its dependency on claim 1 in that it includes novel limitations and a unique combination that would not have been obvious at the time of the invention. Specifically, claim 11 recites that the message is an advertisement. The Office Action contends that this feature is disclosed in Liechti et al. at Col. 10, lines 1-5. Appellant respectfully disagrees.

Col. 10, lines 1-5 of Liechti et al. is reproduced below.

Meter hardware ID field 607 includes four bytes for identifying the meter's shape, style, model, printed circuits, and other details of its hardware. Computer 103 may utilize the hardware information for advertisement or compilation of statistics.

The Office Action is attributing characteristics to the disclosure of Liechti et al. that are simply incorrect. In Liechti et al., a request packet, as illustrated in Fig. 6A, is sent from the meter to the data center. The request packet includes information related to the meter, such as, for example, a meter serial number field and a meter hardware ID field. The meter hardware ID field identifies the meter's shape, style, printed circuits, and other details of its hardware. A computer 103 (located in the data center) may utilize the hardware information for advertisement or compilation of statistics. (Col. 9, line 62 - Col. 10, line 5). Note however, that at no point in Liechti et al. is there any disclosure, teaching or suggestion of a message presented to a plurality of users of a communication system in which the message is an advertisement. If Liechti et al. teaches anything at all, it appears to be the data center simply gathering information related to a meter to determine what type of other products, supplies, or services that may be of interest to the customer that owns the meter (specifically, the computer may utilize the hardware information for advertisement or compilation of statistics). There is no disclosure, teaching or suggestion in Liechti et al. of a message to be presented to users of a communications network, wherein the message is an advertisement as is recited in claim 11.

Claim 12 is directed to a device for metering digital content. Specifically, claim 12 recites:

A device for metering digital content having a message in the form of a data stream to be presented to users of a communications network, the message including an embedded code, said device comprising:

means for detecting the embedded code; and

means for counting the number of times the message is presented to a user based on the detected embedded code.

As noted above, Liechti et al. is directed to a communication system that includes a data center that communicates with a plurality of postage meters via telephone dial-up lines to conduct resetting transactions. The data center is controlled by a postal authority, and can be used for gathering statistical data from each postage meter including the number of mail items in different postal classes processed by the postage meter. The data center can also be utilized to set postage limit amounts, time limits and piece limits on a postage meter. The postage meter can also be reset with additional postage by telephone, thereby obviating the need to physically carry the postage meter to the postal authority for resetting. Specifically, the postage meter calls a computerized central facility (data center) for additional available postage. The central facility verifies the meter's identity and ascertains the availability of funds in the user's account. After the information is validated, the central facility debits the user's account and supplies a combination code to the meter or to the user for the user to introduce into the meter. The meter then independently generates another combination code and compares it with the received code. If their relationship is correct, the meter is reset with the additional postage requested. (Col. 1, lines 12-31).

In Liechti et al., the data center communicates with the postage meters to impose limits, reset the available postage amount, or collect statistical data. This information constitutes the message itself. There is no code embedded in this information that is detected to allow for metering of the message. There is no disclosure, teaching or suggestion anywhere in Liechti et al. of a message included an embedded code, or means for detecting the embedded code as is recited in claim 12.

Furthermore, in Liechti et al., each communication between the data center and a particular meter is a unique, one-time communication to reset the meter and intended for only a single meter. Even if the data passed between the data center and meter is considered a message, there would be no reason or need to count the number of times it is presented to a user, as it is only provided once to a particular meter, and would not be presented to other meters. There is no disclosure, teaching or suggestion in Liechti et al. of a means for counting the number of times the message is presented to a user based on the detected code as is recited in claim 12.

For at least the above reasons, Appellant respectfully submits that the final rejection as to claim 12 is in error and should be reversed. Claims 13-16 are dependent upon claim 12, and therefore include all of the limitations of claim 12. For the same reasons the final rejection as to claim 12 is in error, Appellant respectfully submits that the rejection of claims 13-16 is similarly in error and should be reversed.

Claim 13 is patentable, however, separate and apart from its dependency on claim 12 in that it includes novel limitations and a unique combination that would not have been obvious at the time of the invention. Specifically, claim 13 recites that the device further comprises means for calculating a charge to a client for presenting the message based on the counted number of times the message is presented to a user. There is no disclosure, teaching or suggestion in Liechti et al. of means for calculating a charge to a client for presenting the message based on the counted number of times the message is presented to a user.

Claim 14 is patentable, however, separate and apart from its dependency on claim 12 in that it includes novel limitations and a unique combination that would not have been obvious at the time of the invention. Specifically, claim 14 recites that the device further comprises means for identifying the client based on the detected embedded code in order to debit from the client a monetary amount representative of the charge. There is no disclosure, teaching or suggestion in Liechti et al. of means for identifying the client based on the detected embedded code in order to debit from the client a monetary amount representative of the charge.

Claim 15 is patentable, however, separate and apart from its dependency on claim 12 in that it includes novel limitations and a unique combination that would not have been obvious at the time of the invention. Specifically, claim 15 recites that the message is an advertisement. As noted above, if Liechti et al. teaches anything at all, it appears to be the data center simply gathering information related to a meter to determine what type of other products, supplies, or services that may be of interest to the customer that owns the meter (specifically, the computer may utilize the hardware information for advertisement or compilation of statistics). There is no disclosure, teaching or suggestion in Liechti et al. of a message to be presented to users of a communications network, wherein the message is an advertisement as is recited in claim 15.

Claim 16 is patentable, however, separate and apart from its dependency on claim 12 in that it includes novel limitations and a unique combination that would not have been obvious at the time of the invention. Specifically, claim 16 recites that the communications network includes the Internet and the message is incorporated in a network data stream of the Internet to be presented by a host web service, and wherein the detecting means is operatively connected to the host web service to monitor the network data so as to allow the detecting means to detect the embedded code. There is no disclosure, teaching or suggestion in Liechti et al. incorporating a message in a network data stream of the Internet or a host web service for presenting the message. There is also no disclosure, teaching or suggestion in Liechti et al. of detecting means operatively connected to the host web service to monitor the network data so as to allow the detecting means to detect the embedded code.

Claim 17 is directed to a metering system adapted to count the number of times a message included in digital content is presented to users of a communications network. Specifically, claim 17 recites:

A metering system for a communications network having network data, the metering system adapted to count the number of times a message included in digital content is presented to users of the communications network, the message being contained in the network data in the form of a data stream embedded with a code, the data stream being conveyed to the network by a conveying means, said system comprising:

means, operatively connected to the conveying means, for monitoring the data stream in order to detect the embedded code; and

means, operatively connected to the monitoring means, for counting number of presentations based on the detected embedded code.

As noted above, Liechti et al. is directed to a communication system that includes a data center that communicates with a plurality of postage meters via telephone dial-up lines to conduct resetting transactions. The data center is controlled by a postal authority, and can be used for gathering statistical data from each postage meter including the number of mail items in different postal classes processed by the postage meter. The data center can also be utilized to set postage limit amounts, time limits and piece limits on a postage meter. The postage meter

can also be reset with additional postage by telephone, thereby obviating the need to physically carry the postage meter to the postal authority for resetting. Specifically, the postage meter calls a computerized central facility (data center) for additional available postage. The central facility verifies the meter's identity and ascertains the availability of funds in the user's account. After the information is validated, the central facility debits the user's account and supplies a combination code to the meter or to the user for the user to introduce into the meter. The meter then independently generates another combination code and compares it with the received code. If their relationship is correct, the meter is reset with the additional postage requested. (Col. 1, lines 12-31).

In Liechti et al., the data center communicates with the postage meters to impose limits, reset the available postage amount, or collect statistical data. This information constitutes the message itself. There is no message contained in the network data in the form of a data stream embedded with a code. There is no disclosure, teaching or suggestion anywhere in Liechti et al. of a means for monitoring the data stream in order to detect the embedded code as is recited in claim 17.

Furthermore, in Liechti et al., each communication between the data center and a particular meter is a unique, one-time communication to reset the meter and intended for only a single meter. Even if the data passed between the data center and meter is considered a message, there would be no reason or need to count the number of times it is presented to a user, as it is only provided once to a particular meter, and would not be presented to other meters. There is no disclosure, teaching or suggestion in Liechti et al. of a means for counting a number of presentations based on the detected embedded code as is recited in claim 17.

For at least the above reasons, Appellant respectfully submits that the final rejection as to claim 17 is in error and should be reversed. Claims 18-21 are dependent upon claim 17, and therefore include all of the limitations of claim 17. For the same reasons the final rejection as to claim 17 is in error, Appellant respectfully submits that the rejection of claims 18-21 is similarly in error and should be reversed.

Claim 18 is patentable, however, separate and apart from its dependency on claim 17 in that it includes novel limitations and a unique combination that would not have been obvious at

the time of the invention. Specifically, claim 18 recites that the message is an advertisement. As noted above, if Liechti et al. teaches anything at all, it appears to be the data center simply gathering information related to a meter to determine what type of other products, supplies, or services that may be of interest to the customer that owns the meter (specifically, the computer may utilize the hardware information for advertisement or compilation of statistics). There is no disclosure, teaching or suggestion in Liechti et al. of a message to be presented to users of a communications network, wherein the message is an advertisement as is recited in claim 18.

Claim 19 is patentable, however, separate and apart from its dependency on claim 17 in that it includes novel limitations and a unique combination that would not have been obvious at the time of the invention. Specifically, claim 19 recites that the metering system further comprises a challenge-response mechanism for causing the counting means to pause when the monitoring means is operatively disconnected from the conveying means. There is no disclosure, teaching or suggestion in Liechti et al. of a challenge-response mechanism for causing the counting means to pause when the monitoring means is operatively disconnected from the conveying means.

As noted by the Office Action, claim 20 would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claim.

Claim 21 is patentable, however, separate and apart from its dependency on claim 17 in that it includes novel limitations and a unique combination that would not have been obvious at the time of the invention. Specifically, claim 21 recites that the metering system further comprises a mechanism for metering a click-through process, wherein the user clicks on the message to learn more about the advertisement. There is no disclosure, teaching or suggestion in Liechti et al. of a mechanism for metering a click-through process, wherein the user clicks on the message to learn more about the advertisement.

Claim 22 is directed to a method for metering digital content being presented to users of a communication network. Specifically, claim 22 recites:

A method for metering digital content being presented to users of a communication network, the digital content being contained in a network data stream and including a message embedded with a code to allow a

number of times the message is presented to a user to be counted, said method comprising:

monitoring the network data stream to detect data representative of the embedded code;

recording a number of times the data representative of the embedded code is detected, the number of times the data representative of the embedded code is detected being indicative of presentation of the message to a user; and

calculating a charge for presenting the message based on the number of times the data representative of the embedded code is detected.

The Office Action contends that the actions of verifying the meter's identity, ascertaining the availability of funds in the user's account, and supplying a combination code to the meter or to the user as performed in Liechti et al. discloses monitoring the network data stream to detect data representative of the embedded code (Office Action, page 5). Verifying a meter's identity and ascertaining the availability of funds in the user's account are not the same nor in any way related to monitoring a network data stream to detect data representative of an embedded code. The Office Action further contends that the same actions of verifying the meter's identity, ascertaining the availability of funds in the user's account, and supplying a combination code to the meter or to the user, along with collecting statistical data from each meter and imposing a cumulative postage amount limit, a time limit and/or a piece limit on the meter discloses recording a number of times the data representative of the embedded code is detected. (Office Action, page 5) As noted above, the statistical data collected by the data center relates solely to the operation of the meter, and not to the communications performed between the data center and the meter. There is no basis for the contention that collecting statistical data includes recording a number of times the data representative of the embedded code is detected as recited in claim 22, as they are not the same nor even remotely related.

The Office Action further contends that the statistical data for the number of mail items in different postal classes processed by a postage meter discloses calculating a charge for presenting the message based on the number of times the data representative of the embedded

code is detected, and relies on the disclosure of Col. 4, lines 50-60 to support this position (Office Action, page 5). Col. 4, lines 42-67, of Liechti et al. is reproduced below.

In this illustrative embodiment, data center 15 is controlled by a postal authority for example. Among other things, the postal authority may be interested in gathering statistical data including, for example, numbers of mail items in different postal classes (e.g. first class mail, parcel post, international mail, etc.) processed by a postage meter. Such data is not available in a prior art postage meter.

In accordance with an aspect of the invention, each postage meter is programmed to have charge classes each defined by an upper limit and a lower limit of postage values. If a class should be defined by a single value, the lower and upper limits are set to that value. For example, charge class 1 includes items with a postage value of 29 cents; charge class 2 includes items with postage values between 30 cents and 35 cents; charge class 3 includes items with postage values between 36 cents and 42 cents, and so on and so forth; any items that do not fall within one of the above charge classes are grouped within a separate, miscellaneous class 0.

Each of the above charge classes is designed to relate to a postal class. Mail items processed by the meter are tallied according to these charge classes. To this end, the meter allocates a counter for each charge class to count the items belonging to the class. The count is cumulative until the counter is read into a class reading buffer to be subsequently transferred to the data center 15.

The Office Action, starting on the last line on page 5 to the second line on page 6, states that "charge classes i.e. class 1 and class 2 are interpreted as a process of calculating a charge." There is no basis for this interpretation. In Liechti et al., each postage meter maintains data indicating the number of mail pieces processed by the postage meter based on the charge class in which it is processed. The charge classes are defined by upper and lower limits of postage values. There is no relationship whatsoever between the tallying of mail items processed by a postage meter based on charge classes as described in Liechti et al. and calculating a charge for presenting the message based on the number of times the data representative of the embedded code is detected as is recited in claim 22. The charge classes described in Liechti et al. are for mail items that have been processed by the postage meter. The charge classes are in no way related to calculating a charge for presenting a message. There is no disclosure, teaching or suggestion in Liechti et al. of calculating a charge for presenting the message based on the

number of times the data representative of the embedded code is detected as is recited in claim 22.

For at least the above reasons, Appellant respectfully submits that the final rejection as to claim 22 is in error and should be reversed. Claims 23-26 are dependent upon claim 22, and therefore include all of the limitations of claim 22. For the same reasons the final rejection as to claim 22 is in error, Appellant respectfully submits that the rejection of claims 23-26 is similarly in error and should be reversed.

Claim 23 is patentable, however, separate and apart from its dependency on claim 22 in that it includes novel limitations and a unique combination that would not have been obvious at the time of the invention. Specifically, claim 23 recites that the digital content includes an advertisement and the charge for presenting the message includes an advertisement charge. As noted above, if Liechti et al. teaches anything at all, it appears to be the data center simply gathering information related to a meter to determine what type of other products, supplies, or services that may be of interest to the customer that owns the meter (specifically, the computer may utilize the hardware information for advertisement or compilation of statistics). There is no disclosure, teaching or suggestion in Liechti et al. of the digital content including an advertisement, nor is there any disclosure, teaching or suggestion in Liechti et al. of a charge for presenting a message including an advertisement charge as is recited in claim 23.

Claim 24 is patentable, however, separate and apart from its dependency on claim 22 in that it includes novel limitations and a unique combination that would not have been obvious at the time of the invention. Specifically, claim 24 adds the further limitation of determining a rate for charging a client based on the embedded code so as to calculate the advertisement charge. There is no disclosure, teaching or suggestion in Liechti et al. of determining a rate for charging a client based on the embedded code so as to calculate the advertisement charge as is recited in claim 24.

Claim 25 is patentable, however, separate and apart from its dependency on claim 22 in that it includes novel limitations and a unique combination that would not have been obvious at the time of the invention. Specifically, claim 25 adds the further limitation of debiting a client a monetary amount based on the calculated advertisement charge. There is no disclosure, teaching

or suggestion in Liechti et al. of debiting a client a monetary amount based on the calculated advertisement charge as is recited in claim 25.

Claim 26 is patentable, however, separate and apart from its dependency on claim 22 in that it includes novel limitations and a unique combination that would not have been obvious at the time of the invention. Specifically, claim 26 adds the further limitation of looking up client information in order to determine the charge rate. There is no disclosure, teaching or suggestion in Liechti et al. of looking up client information in order to determine the charge rate as is recited in claim 26.

Claim 27 is directed to a method of metering digital content having a message to be presented to users of a communications network. Specifically, claim 27 recites:

A method of metering digital content having a message to be presented to users of a communications network, said method comprising:

embedding a code in said message;

detecting the embedded code;

based on the detected embedded code, counting the number of times the message is presented to a user of the communications network; and

calculating a charge based on the number of times the message is presented to a user.

The Office Action contends that verifying the meter's identity, ascertaining the availability of funds in the user's account, supplying a combination code to the meter or to the user and collecting statistical data from each meter is equivalent to the current invention. Appellant respectfully disagrees. There is no disclosure, teaching or suggestion of a method or system for metering messages presented via a communication network in Liechti et al. Liechti et al., as noted above, is directed to a communication system that includes a data center and a plurality of postage meters. A communication system in which a data center communicates with a plurality of postage meters is in no way related to a system or method for metering digital content that includes a message to be presented to users of a communication network. The Office Action contends that the actions of verifying the meter's identity, ascertaining the

availability of funds in the user's account, and supplying a combination code to the meter or to the user as performed in Liechti et al. discloses embedding a code in a message and detecting the embedded code. (Office Action, pages 4-5). There is no basis for this contention, as in Liechti et al. there is no disclosure, teaching or suggestion of embedding any type of code in a message, nor is there any disclosure, teaching or suggestion of detecting the embedded code. In Liechti et al., the data center communicates with the postage meters to impose limits, reset the available postage amount, or collect statistical data. This information constitutes the message itself. There is no code embedded in this information that is detected to allow for metering of the message. There is no disclosure, teaching or suggestion anywhere in Liechti et al. of embedding a code in a message or detecting the embedded code.

The Office Action further contends that collecting statistical data includes counting the number of times the message is presented, and relies on the disclosure of Col. 5, lines 23-65 to support this position (Office Action, page 5). The statistical data collected by the data center in Liechti et al. relates solely to the operation of the meter, and not to the communications performed between the data center and the meter. There is no basis for the contention that collecting statistical data includes counting the number of times the message is presented to a user. Furthermore, the description provided in Col. 5, lines 23-65, is related to the restrictions that can be imposed on a meter by the data center. For example, the value of the ascending register within the meter may not exceed the postage limit amount at any time. The meter becomes inoperative as soon as the ascending register (within the postage meter) is greater than or equal to the postage amount limit. Only by connection of the meter to the data center may a new postage amount limit be established. (Col. 5, lines 22-27). Similarly, a time limit can be imposed on a meter that restricts a time period within which the meter is operative. Specifically, the time limit is expressed as a pre-selected date after which the meter is no longer allowed to process any mail items. Only by connection of the meter to the data center may a new time limit be established and the meter be unlocked and resume operation. (Col. 5, lines 34-41). Alternatively, the time limit concept may be implemented using a down counting timer in the meter. (Col. 5, lines 44-46). A piece limit imposed on a meter restricts the number of mail items processed by the meter. During operation, the meter may not process more mail items than the

allowed piece limit. Only by connection of the meter to the data center may a new piece limit be established and the meter be unlocked and resume operation. (Col. 5, lines 56-62).

There is no disclosure, teaching or suggestion anywhere in the passages relied upon by the Office Action, or anywhere in Liechti et al. for that matter, of counting the number of times a message is presented to a user based on the detected embedded code. In fact, in Liechti et al. each communication between the data center and a particular meter is a unique, one-time communication to reset the meter and intended for only a single meter. Thus, even if the data passed between the data center and meter is considered a message, it is only provided once to a particular meter, and would not be presented to other meters. There would, therefore, be no reason or need to count the number of times a message is presented to a user.

The Office Action further contends that the statistical data for the number of mail items in different postal classes processed by a postage meter discloses calculating a charge for presenting the message based on the number of times the data representative of the embedded code is detected, and relies on the disclosure of Col. 4, lines 50-60 to support this position (Office Action, page 5). As noted above, in Liechti et al., each postage meter maintains data indicating the number of mail pieces processed by the postage meter based on the charge class in which it is processed. The charge classes are defined by upper and lower limits of postage values. There is no relationship whatsoever between the tallying of mail items processed by a postage meter based on charge classes as described in Liechti et al. and calculating a charge for presenting the message based on the number of times the data representative of the embedded code is detected as is recited in claim 27. The charge classes described in Liechti et al. are for mail items that have been processed by the postage meter. The charge classes are in no way related to calculating a charge for presenting a message. There is no disclosure, teaching or suggestion in Liechti et al. of calculating a charge based on the number of times the message is presented to a user as is recited in claim 27.

For at least the above reasons, Appellant respectfully submits that the final rejection as to claim 27 is in error and should be reversed. Claims 28-37 are dependent upon claim 27, and therefore include all of the limitations of claim 27. For the same reasons the final rejection as to

claim 27 is in error, Appellant respectfully submits that the rejection of claims 28-37 is similarly in error and should be reversed.

As noted by the Office Action, claim 29 would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claim.

Claim 30 is patentable, however, separate and apart from its dependency on claim 27 in that it includes novel limitations and a unique combination that would not have been obvious at the time of the invention. Specifically, claim 30 adds the further limitation of the code being embedded in a steganographic fashion. There is no disclosure, teaching or suggestion in Liechti et al. of the code being embedded in a steganographic fashion as is recited in claim 30.

Claim 31 is patentable, however, separate and apart from its dependency on claim 27 in that it includes novel limitations and a unique combination that would not have been obvious at the time of the invention. Specifically, claim 31 adds the further limitation of the message being presented by a server, and the embedded code contains a client identity associated with a client responsible for paying the calculated charge for presenting the message in the digital content. There is no disclosure, teaching or suggestion in Liechti et al. of the message being presented by a server, and the embedded code containing a client identity associated with a client responsible for paying the calculated charge for presenting the message in the digital content as is recited in claim 31.

Claim 32 is patentable, however, separate and apart from its dependency on claim 27 in that it includes novel limitations and a unique combination that would not have been obvious at the time of the invention. Specifically, claim 32 adds the further limitation of the embedded code containing a rate code for calculating the charge for presenting the message in the digital content and calculating the charge based on the counted number of times and the rate code. There is no disclosure, teaching or suggestion in Liechti et al. of the embedded code containing a rate code for calculating the charge for presenting the message in the digital content and calculating the charge based on the counted number of times and the rate code as is recited in claim 32.

Claim 33 is patentable, however, separate and apart from its dependency on claim 27 in that it includes novel limitations and a unique combination that would not have been obvious at the time of the invention. Specifically, claim 33 adds the further limitation of the rate code including a fixed rate. There is no disclosure, teaching or suggestion in Liechti et al. of the rate code including a fixed rate as is recited in claim 33.

Claim 34 is patentable, however, separate and apart from its dependency on claim 27 in that it includes novel limitations and a unique combination that would not have been obvious at the time of the invention. Specifically, claim 34 adds the further limitation of the rate code including a variable rate based on the time and/or date of presenting the message to a user. There is no disclosure, teaching or suggestion in Liechti et al. of the rate code including a variable rate based on the time and/or date of presenting the message to a user as is recited in claim 34.

As noted by the Office Action, claim 35 would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claim.

Claim 36 is patentable, however, separate and apart from its dependency on claim 27 in that it includes novel limitations and a unique combination that would not have been obvious at the time of the invention. Specifically, claim 36 adds the further limitation of the communications network including a plurality of destination domains, and the rate code contains a charge rate based on the destination domain. There is no disclosure, teaching or suggestion in Liechti et al. of the communications network including a plurality of destination domains, and the rate code containing a charge rate based on the destination domain as is recited in claim 36.

Claim 37 is patentable, however, separate and apart from its dependency on claim 27 in that it includes novel limitations and a unique combination that would not have been obvious at the time of the invention. Specifically, claim 37 recites that the message is an advertisement. As noted above, in Liechti et al. the data center simply gathers information related to a meter to determine what type of other products, supplies, or services that may be of interest to the customer that owns the meter (specifically, the computer may utilize the hardware information for advertisement or compilation of statistics). There is no disclosure, teaching or suggestion in

Liechti et al. of a method of metering digital content having a message to be presented to users of a communications network, wherein the message is an advertisement as is recited in claim 37.

Claim 38 is directed to a metering system for a communications network that is adapted to count the number of times a message is presented to user of the communications network. Specifically, claim 38 recites:

A metering system for a communications network having network data, the metering system adapted to count the number of times a message included in digital content is presented to users of the communications network, the message being contained in the network data in the form of a data stream embedded with a code, the data stream being conveyed to the network by a conveying means, said system comprising:

means, operatively connected to the conveying means, for monitoring the data stream in order to detect the embedded code; and

means, operatively connected to the monitoring means, for counting number of presentations based on the detected embedded code; and

means for calculating a charge based on the counted number of presentations.

As noted above, in Liechti et al., the data center communicates with the postage meters to impose limits, reset the available postage amount, or collect statistical data. This information constitutes the message itself. There is no message contained in the network data in the form of a data stream embedded with a code. There is no disclosure, teaching or suggestion anywhere in Liechti et al. of a means for monitoring the data stream in order to detect the embedded code as is recited in claim 38.

Additionally, in Liechti et al., each communication between the data center and a particular meter is a unique, one-time communication to reset the meter and intended for only a single meter. Even if the data passed between the data center and meter is considered a message, there would be no reason or need to count the number of times it is presented to a user, as it is only provided once to a particular meter, and would not be presented to other meters. There is no disclosure, teaching or suggestion in Liechti et al. of a means for counting a number of presentations based on the detected embedded code as is recited in claim 38.

Furthermore, the statistical data for the number of mail items in different postal classes processed by a postage meter collected in Liechti et al. is in no way related to calculating a charge for presenting the message based on the number of times the data representative of the embedded code is detected. As noted above, in Liechti et al., each postage meter maintains data indicating the number of mail pieces processed by the postage meter based on the charge class in which it is processed. The charge classes are defined by upper and lower limits of postage values. There is no relationship whatsoever between the tallying of mail items processed by a postage meter based on charge classes as described in Liechti et al. and the means for calculating a charge based on the counted number of presentations. The charge classes described in Liechti et al. are for mail items that have been processed by the postage meter. The charge classes are in no way related to calculating a charge for presenting a message. There is no disclosure, teaching or suggestion in Liechti et al. of means for calculating a charge based on the counted number of presentations as is recited in claim 38.

For at least the above reasons, Appellant respectfully submits that the final rejection as to claim 38 is in error and should be reversed. Claims 39-41 are dependent upon claim 38, and therefore include all of the limitations of claim 38. For the same reasons the final rejection as to claim 38 is in error, Appellant respectfully submits that the rejection of claims 39-41 is similarly in error and should be reversed.

Claim 39 is patentable, however, separate and apart from its dependency on claim 38 in that it includes novel limitations and a unique combination that would not have been obvious at the time of the invention. Specifically, claim 39 recites that the message is an advertisement. As noted above, in Liechti et al. the data center simply gathers information related to a meter to determine what type of other products, supplies, or services that may be of interest to the customer that owns the meter (specifically, the computer may utilize the hardware information for advertisement or compilation of statistics). There is no disclosure, teaching or suggestion in Liechti et al. of a metering system for a communications network that is adapted to count the number of times a message included in digital content is presented to users of the communications network, wherein the message is an advertisement as is recited in claim 39.

Claim 40 is patentable, however, separate and apart from its dependency on claim 38 in that it includes novel limitations and a unique combination that would not have been obvious at the time of the invention. Specifically, claim 40 includes the further limitation of a challenge-response mechanism for causing the counting means to pause when the monitoring means is operatively disconnected from the conveying means. There is no disclosure, teaching or suggestion in Liechti et al. of a challenge-response mechanism for causing the counting means to pause when the monitoring means is operatively disconnected from the conveying means as is recited in claim 40.

As noted by the Office Action, claim 41 would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claim.

IX. Conclusion

In Conclusion, Appellants respectfully submit that the final rejection of claims 1, 2, 4, 5, 11-19, 21-28, 30-34 and 36-40 is in error for at least the reasons given above and should, therefore, be reversed.

Respectfully submitted,



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Attachment - Appendix A (7 pages)

APPENDIX A

1. A method of metering digital content having a message to be presented to users of a communications network, said method comprising:

embedding a code in said message;

detecting the embedded code; and

based on the detected embedded code, counting the number of times the message is presented to a user of the communications network.

2. The method of claim 1, wherein the communications network includes the Internet.

3. The method of claim 2, wherein the message is presented in an image format to be implemented as a stream of image data contained in a network data stream and the code is embedded in the image data, said method further comprising:

monitoring the network data stream to detect the embedded code.

4. The method of claim 1, wherein the code is embedded in a steganographic fashion.

5. The method of claim 1, wherein the message is presented by a server, and wherein the embedded code contains a client identity associated with the digital content.

6. The method of claim 1, wherein the embedded code contains a rate code for calculating a charge to a client for presenting the message in the digital content, said method further comprising:

calculating the charge based on the counted number of times and the rate code.

7. The method of claim 6, wherein the rate code includes a fixed rate.

8. The method of claim 6, wherein the rate code includes a variable rate based on the time and/or date of presenting the message to a user.
9. The method of claim 6, wherein the message is presented as an image on a display screen, and the image has a size relative to the display screen, and wherein the rate code contains a charge rate based on the image size.
10. The method of claim 6, wherein the communications network includes a plurality of destination domains, and wherein the rate code contains a charge rate based on the destination domain.
11. The method of claim 1, wherein the message is an advertisement.
12. A device for metering digital content having a message in the form of a data stream to be presented to users of a communications network, the message including an embedded code, said device comprising:
 - means for detecting the embedded code; and
 - means for counting the number of times the message is presented to a user based on the detected embedded code.
13. The device of claim 12, further comprising:
 - means for calculating a charge to a client for presenting the message based on the counted number of times the message is presented to a user.
14. The device of claim 13, further comprising:
 - means for identifying the client based on the detected embedded code in order to debit from the client a monetary amount representative of the charge.
15. The device of claim 12, wherein the message is an advertisement.
16. The device of claim 12, wherein the communications network includes the Internet and the message is incorporated in a network data stream of the Internet to be

presented by a host web service, and wherein the detecting means is operatively connected to the host web service to monitor the network data so as to allow the detecting means to detect the embedded code.

17. A metering system for a communications network having network data, the metering system adapted to count the number of times a message included in digital content is presented to users of the communications network, the message being contained in the network data in the form of a data stream embedded with a code, the data stream being conveyed to the network by a conveying means, said system comprising:

means, operatively connected to the conveying means, for monitoring the data stream in order to detect the embedded code; and

means, operatively connected to the monitoring means, for counting number of presentations based on the detected embedded code.

18. The metering system of claim 17, wherein the message is an advertisement.

19. The metering system of claim 17, further comprising a challenge-response mechanism, connected to the network independently of the web server, for causing the counting means to pause when the monitoring means is operatively disconnected from the conveying means.

20. The system of claim 17, further comprising a mechanism, remote from the monitoring means, for sending an authentication message to the monitoring means on a fixed time basis, and wherein the monitoring means is adapted to disable the counting means when the monitoring means does not receive the authentication message on the fixed time basis.

21. The system of claim 18, further comprising a mechanism for metering a click-through process, wherein the user clicks on the message to learn more about the advertisement.

22. A method for metering digital content being presented to users of a communication network, the digital content being contained in a network data stream and including a message embedded with a code to allow a number of times the message is presented to a user to be counted, said method comprising:

monitoring the network data stream to detect data representative of the embedded code;

recording a number of times the data representative of the embedded code is detected, the number of times the data representative of the embedded code is detected being indicative of presentation of the message to a user; and

calculating a charge for presenting the message based on the number of times the data representative of the embedded code is detected.

23. The method of claim 22, wherein the digital content includes an advertisement and the charge for presenting the message includes an advertisement charge.

24. The method of claim 23, further comprising:

determining a rate for charging a client based on the embedded code so as to calculate the advertisement charge.

25. The method of claim 23, further comprising:

debiting a client a monetary amount based on the calculated advertisement charge.

26. The method of claim 23, further comprising:

looking up client information in order to determine the charge rate.

27. A method of metering digital content having a message to be presented to users of a communications network, said method comprising:

embedding a code in said message;

detecting the embedded code;

based on the detected embedded code, counting the number of times the message is presented to a user of the communications network; and

calculating a charge based on the number of times the message is presented to a user.

28. The method of claim 27, wherein the communications network includes the Internet.

29. The method of claim 28, wherein the message is presented in an image format to be implemented as a stream of image data contained in a network data stream and the code is embedded in the image data, said method further comprising:

monitoring the network data stream to detect the embedded code.

30. The method of claim 27, wherein the code is embedded in a steganographic fashion.

31. The method of claim 27, wherein the message is presented by a server, and wherein the embedded code contains a client identity associated with a client responsible for paying the calculated charge for presenting the message in the digital content.

32. The method of claim 27, wherein the embedded code contains a rate code for calculating the charge for presenting the message in the digital content, said method further comprising:

calculating the charge based on the counted number of times and the rate code.

33. The method of claim 32, wherein the rate code includes a fixed rate.

34. The method of claim 33, wherein the rate code includes a variable rate based on the time and/or date of presenting the message to a user .

35. The method of claim 32, wherein the message is presented as an image on a display screen, and the image has a size relative to the display screen, and wherein the rate code contains a charge rate based on the image size.

36. The method of claim 32, wherein the communications network includes a plurality of destination domains, and wherein the rate code contains a charge rate based on the destination domain.

37. The method of claim 27, wherein the message is an advertisement.

38. A metering system for a communications network having network data, the metering system adapted to count the number of times a message included in digital content is presented to users of the communications network, the message being contained in the network data in the form of a data stream embedded with a code, the data stream being conveyed to the network by a conveying means, said system comprising:

means, operatively connected to the conveying means, for monitoring the data stream in order to detect the embedded code; and

means, operatively connected to the monitoring means, for counting number of presentations based on the detected embedded code; and

means for calculating a charge based on the counted number of presentations.

39. The metering system of claim 38, wherein the message is an advertisement.

40. The metering system of claim 38, further comprising a challenge-response mechanism, connected to the network independently of the web server, for causing the counting means to pause when the monitoring means is operatively disconnected from the conveying means.

41. The system of claim 38, further comprising a mechanism, remote from the monitoring means, for sending an authentication message to the monitoring means on a fixed time basis, and wherein the monitoring means is adapted to disable the counting means when the monitoring means does not receive the authentication message on the fixed time basis.